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BLANK ROME LLP 600 NEW HAMPSHIRE AVENUE, N.W. WASHINGTON, DC 20037			ZHONG, CHAD	
			ART UNIT	PAPER NUMBER
			2152	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/765,431

Applicant(s)

JOHNS ET AL.

Examiner

Chad Zhong

Art Unit

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## FINAL ACTION

1. Regarding the Applicant's request to reset the response time, MPEP 710.06 is replicated as follows:

710.06 [R-2] Situations When Reply Period Is Reset or Restarted Where the citation of a reference is incorrect or an Office action contains some other defect and this error is called to the attention of the Office within 1 month of the mail date of the action, the Office will restart the previously set period for reply to run from the date the error is corrected, if requested to do so by applicant. If the error is brought to the attention of the Office within the period for reply set in the Office action but more than 1 month after the date of the Office action, the Office will set a new period for reply, if requested to do so by the applicant, to substantially equal the time remaining in the reply period. For example, if the error is brought to the attention of the Office 5 weeks after mailing the action, then the Office would set a new 2-month period for reply. The new period for reply must be at least 1 month and would run from the date the error is corrected. See MPEP § 707.05(g) for the manner of correcting the record where there has been an erroneous citation.

Where for any reason it becomes necessary to remail any action (MPEP § 707.13), the action should be correspondingly redated, as it is the remailing date that establishes the beginning of the period for reply. Ex parte Gourtoff, 1924 C.D. 153, 329 O.G. 536 (Comm'r Pat. 1924). >For Image File Wrapper (IFW) processing, see IFW Manual.<

A supplementary action after a rejection explaining the references more explicitly or giving the reasons more fully, even though no further references are cited, establishes a new date from which the statutory period runs.

If the error in citation or other defective Office action is called to the attention of the Office after the expiration of the period for reply, the period will not be restarted and any appropriate extension fee will be required to render a reply timely. The Office letter correcting the error will note that the time period for reply remains as set forth in the previous Office action. See MPEP § 505, § 512, and § 513 for U.S. Patent and Trademark Office practice on date stamping documents.

In the event that correspondence from the Office is received late (A) due to delays in the U.S. Postal Service, or (B) because the mail was delayed in leaving the USPTO (the postmark date is later than the mail date printed on the correspondence), applicants may petition to reset the period for reply, which petition shall be evaluated according to the guidelines which follow. Where the Office action involved in the petition was mailed by a Technology Center (TC), the authority to decide such petitions has been delegated to the TC Director. See Notice entitled "Petition to reset a period for response due to late receipt of a PTO action," 1160 O.G. 14 (March 1, 1994).

The last office action was mailed on 07/14/2005, setting a three (3) months shortened statutory period of reply, setting 10/14/2005 as the last day to reply without a filing for an extension of time. Accordingly, Applicant's representative of record Mr. Edmonson Reg# 35,126 has contacted the Examiner on

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8/15/2005 in a written reply. The previous office action has been modified as suggested by the Applicant's representative and the time to file a response as been reset to three (3) months from the mailing date of this Office Action.

2. This action is responsive to communications: Amendment, filed on 03/17/2005. This action has been made final.

3. Claims 1-14 are presented for examination.

Claims 1, 4, 14 are amended.

4. Applicant's remarks filed 03/17/2005 have been considered but are found not persuasive in view at the new grounds at rejection necessitated by Applicant's amendment.

***Claim Rejections - 35 USC § 112, second paragraph***

Claims 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The following terms lack antecedent basis:

i. said at least one performance monitor - claim 1, lines 3-4.

b. The claim language in the following claims is not clearly understood:

i. As per claim 1, line 7, it is not clearly understood what is meant by 'views'(i.e. are they displayed?)

ii. As per claim 1, line 10, it is not clearly understood what is meant by "pseudo message".

iii. As per claim 1, line 10, it is not clearly understood what is determined in 'determine network availability'.

iv. As per claim 1, line 13, it is not clearly understood what is meant by "availability problems".

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-8, 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter Badt), US 2003/0133417, in view of Bush, US 6,754,664.

6. As per claim 1, Badt teaches a method for monitoring performance and availability on a network, the method comprising:

(a) running at least one performance monitor process on the network (wherein the performance monitor is the local monitoring on each of the nodes as messages are passed between each of the nodes [0185], [0096], [0100-0103], performance monitor exist locally at each node, and capacity information is updated periodically through the explore and return messages), said at least one performance monitor watching network activity to and from application server to entry servers and activity audit trail for the network ([0060-0061], [0100-0102], audit trail performs the topology monitoring of neighbors);

(b) running a network monitor manager process ([0171]; [0178], wherein OSS 326 is the monitor manager process) on the network, for consolidating information from log into views ([0178]; [0008], wherein database is generated and populated for users to view available capacity in the network);

(c) establishing a connection from the network monitor manager process to said at least one performance monitor process to control said at least one performance monitor to send a pseudo message to an entry server to determine network availability; ([0007]; [0096]; [0100-0102]; [0171]; [0178]; wherein local monitoring done by each nodes such as ID, IP, port information are

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sent to the OSS central monitoring process for keeping accurate up-to-date mapping of the topology of the network, messages are traversed through out the network and availability information are sent back to OSS 326 and kept track therein; the pseudo message comprises explore message, response message, alarm message), and

(d) receiving the pseudo message from said at least one performance monitor process and determining a response for the pseudo message for each segment of the network traversed by the pseudo message to determine where availability problems exist within the network connection for the entry server ([0185], wherein upon the failure in the network, appropriate response in the form of re-route occurs in accordance with the mapping information gathered previously to navigate packets away from the failed location).

Badt does not explicitly teach creating a transaction response time log by the performance monitor.

However, Bush teaches a performance monitoring system have a response time log for record keeping purposes (Col. 13, lines 30-40). It would have been obvious to the person ordinary skill in the art at the time of the invention to combine teachings of Badt and Bush because track of response time as used by Bush would lead to transaction response time log by the performance monitor of Badt, and would result in enhancing the history and record keeping in Badt's system.

7. As per claim 3, Badt teaches the method of claim 1, further comprising:

(i) running a client-server monitoring process on a server dedicated to the client server monitoring process ([0178]);

(j) receiving, in the client-server monitoring process, information about transactions executed by production applications on the network ([0155]; [0159]; [0171]; [0178]); and

(k) determining performance and availability of the production applications in accordance with the information received in step (j) ([0113]; [0155]; [0159]; [0161]; [0178]).

8. As per claim 4, Badt teaches the method of claim 3, wherein step (j) comprises running a filtering agent on each or on behalf of each of the production applications to convert the information from application logs into a form usable by the client-server monitoring process ([0086-0088], features a signal conversion aspect of Badt to convert signals into network monitor compatible format).

9. As per claim 5, Badt teaches the method of claim 4, wherein:

the network comprises a mainframe having at least one logical partition which generates an application log ([0178]); and

the method further comprises (1) monitoring the application log through a mainframe monitoring process ([0178]; [0174]).

10. As per claim 6, Badt teaches the method of claim 5, wherein:

the application log comprises transaction entries having end-user addresses ([0178]); and

step (1) comprises categorizing the transaction entries by the end-user addresses ([0174]; [0178]).

11. As per claim 7, Badt teaches the method of claim 6, further comprising (m) generating a performance report for the network through an administrative process and making the report available over a data network ([0178], wherein over available capacity of the network is generated).

12. As per claim 8, Badt teaches the method of claim 7, wherein the data network comprises the Internet ([0148]).

13. As per claim 12, Badt teaches:

the method of claim 4, wherein each said filtering agent detects processes running on the network and cross-references the detected processes to known processes, and further comprising forming an event correlation engine in accordance with the detected processes ([0086-0088]; [0174]).

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14. As per claim 13, Badt teaches:

the method of claim 12, wherein each said filtering agent detects changes to the processes running on the network, and further comprising maintaining the event correlation engine in accordance with the detected changes to the processes ([0086-0088]; [0174]; [0178]).

*Claim Rejections - 35 USC § 103*

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter Badt), US 2003/0133417, in view of in view of Bush, US 6,754,664, further in view of Hemphill et al. (hereinafter Hemphill), US 5,696,895.

17. As per claim 2, Badt and Bush disclose the limitation substantially as claimed, as described in claim 1, but, Badt and Bush do not explicitly teach (e) running at least one availability monitor process on the network;

(f) from the response determined in step (d), detecting at least one possibly failed component of the network;

(g) sending a message from the at least one availability monitor process to the at least one possibly failed component; and

(h) determining, in accordance with a result of the message, whether the at least one possibly failed component has failed.

In a similar system, Hemphill teaches of plurality of systems exchanging heartbeat messages, the recovery

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agents are doing monitoring of network statuses through these heartbeat messages. In event of a potential failure the recovery agent will no longer receive heartbeat messages, a confirmation message is sent out to the device being monitored to verify its status, and if there is no response, the device being monitored is determined to have failed.

It would have been obvious to the person ordinary skill in the art at the time of the invention to combine Badt, Bush and Hemphill because network monitoring as used by Hemphill would lead to monitoring of potential failures and verify if they are actually errors of Badt and Bush, and would result in enhancing the error detection capabilities in the network as there is an extra verification step to make sure there is indeed an error.

18. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter Badt), US 2003/0133417, in view of Bush, US 6,754,664, further in view of Dattatri, US 2002/0049815.

19. As per claim 9, Badt and Bush disclose the limitation substantially as claimed, as described in claim 8, but, Badt and Bush do not explicitly teach

(n) receiving, in the client-server monitoring process, information about transactions executed by e-commerce applications on the network; and

(o) determining performance and availability of the e-commerce applications in accordance with the information received in step (n) through an e-commerce monitoring process.

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified.

Dattatri teaches:

(n) receiving, in the client-server monitoring process, information about transactions executed by e-

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commerce applications on the network ([0111]; [0110]); and

(o) determining performance and availability of the e-commerce applications in accordance with the information received in step (n) through an e-commerce monitoring process ([0110]; [0115]; [0078]).

It would have been obvious to combine teachings of Badt, Bush and Dattatri in order to monitor transactional processes in an e-commerce environment for potential errors (Dattatri, [0008]; [0017]).

20. As per claim 10, Badt and Bush disclose the limitation substantially as claimed, as described in claim 9, but, Badt and Bush do not explicitly teach wherein at least one of the e-commerce applications makes at least one Web page accessible to customers, and wherein step (n) comprises placing code in the at least one Web page, the code sending time stamps to the client-server monitoring process when the code is accessed.

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified.

Dattatri teaches:

the e-commerce applications makes at least one Web page accessible to customers, and wherein step (n) comprises placing code in the at least one Web page, the code sending time stamps to the client-server monitoring process when the code is accessed ([0069]; [0088]). It would have been obvious to combine teachings of Badt, Bush and Dattatri in order to monitor transactional processes in an e-commerce environment for potential errors (Dattatri, [0008]; [0017]).

21. As per claim 11, Badt teaches the method of claim 10, further comprising providing a central data repository, and wherein the network monitor manager process, the client-server monitoring process, the mainframe monitoring process, the administrative process, ([0178])

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Badt and Bush does not explicitly teach:

the e-commerce monitoring process communicate with one another through the central data repository

Dattatri teaches a network monitoring system operating under e-commerce environment keeping track of network transactions, specifically, Dattatri teaches a system for commercial communications in which communication between trading partners is tracked so that information goes to a desired trading partner in a timely manner and in which receipt can be verified.

Dattatri teaches the e-commerce monitoring process communicate with one another through the central data repository (Fig 1, 2, wherein system is communicating through the repository for message back ups).

It would have been obvious to combine teachings of Badt, Bush and Dattatri in order to monitor transactional processes in an e-commerce environment to monitor errors (Dattatri, [0008]; [0017]).

22. Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Badt, Jr. (hereinafter Badt), US 2003/0133417, in view of Bush, US 6,754,664, further in view of Lin et al. (hereinafter Lin), US 6,405,250.

23. As per claim 14, Badt and Bush teaches when it is determined in step (k) that the performance or the availability of one of the production applications is impaired, determine its corresponding effect on an SLA in accordance with the event correlation engine (Badt, [0129]).

Badt and Bush do not explicitly teach when it is determined in step (k) that the performance or the availability of one of the production applications is impaired, determining and reporting a cause of impairment.

However, Lin teaches a network monitoring system based on a series of agents reporting to central server, specifically, Lin teaches further monitoring the cause of failure (Col. 9, lines 35-55). It would have been

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obvious to combine teachings of Badt, Bush and Lin in order to determine reasons for failure during a catastrophic event see for example, (Lin Col. 9, lines 35-55; Col. 2, lines 12-25).

### *Conclusion*

24. **THIS ACTION IS MADE FINAL.** Applicant is reined of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents and publications are cited to further show the state of the art with respect to "SYSTEM AND METHOD FOR CONTINUOUS MONITORING AND MEASUREMENT OF PERFORMANCE OF COMPUTERS ON NETWORK".

- |      |                 |               |
|------|-----------------|---------------|
| i.   | US 2002/0133584 | Greuel et al. |
| ii.  | US 5964837      | Chao et al.   |
| iii. | US 2002/0055967 | Coussement    |
| iv.  | US 5764626      | VanDervort.   |


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chad Zhong whose telephone number is (571)272-3946. The examiner can normally be reached on M-F 7:15 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BURGESS, GLENTON B can be reached on (571)272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CZ  
October 5, 2005



**BUNJOB JAROENCHONWANIT**  
**PRIMARY EXAMINER**